

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

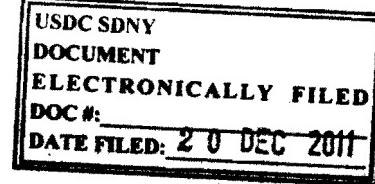
KENRICK AUSTIN,

Plaintiff,

-against-

C.O. JOHN E. LYNCH et al.,

Defendants.



10-CV-7534 (JPO)(GWG)

OPINION AND ORDER

X

J. PAUL OETKEN, District Judge:

I. Background

Kenrick Austin, proceeding pro se, brought this action pursuant to 42 U.S.C. § 1983 against employees of the New York State Department of Corrections (“DOC”). We assume the parties’ familiarity with the underlying facts and procedural history of this case.

On November 16, 2011, Inna Reznik, Assistant Attorney General, notified the Court that Austin had been discharged from DOC’s custody and deported to Jamaica. On November 28, 2011, Magistrate Judge Gorenstein issued a Report and Recommendation, noting that the Court had “specifically instructed Austin that he must inform the Court of any change of address,” and that, as Austin had failed to provide the Court with a new address, the Court had no way to contact Austin. (Docket No. 28). Consequently, Judge Gorenstein recommended that this action be dismissed without prejudice.

Judge Gorenstein further notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties could serve and file any objections to the Report and Recommendation within fourteen days, or by December 12, 2011. Neither party filed any objections to Judge Gorenstein’s Report and Recommendation.

II. Legal Standard

When no objections are filed to a Report and Recommendation, a district court need only satisfy itself that there is no “clear error on the face of the record” in order to accept the recommendation. Fed. R. Civ. P. 72(b) advisory committee’s note; *see also Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985).

The Second Circuit has held that failure to timely object to a magistrate judge’s report and recommendation operates as a waiver of appellate review of the district court’s order adopting a magistrate judge’s report and recommendation. *See DeLeon v. Strack*, 234 F.3d 84, 86 (2d Cir. 2000) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989)).

III. Analysis

The Court has reviewed the Report and Recommendation and finds it to be well-reasoned and free of any clear error on the face of the record.

The Court thus adopts the Report and Recommendation in its entirety. Accordingly, this action is dismissed without prejudice. The Court shall not collect any fees for this case, nor shall any fees for this case be encumbered by any facility that holds Plaintiff in custody.

The Court certifies, pursuant to 28 U.S.C. § 1951(a)(3), that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppededge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

Dated: New York, New York
December 19, 2011



J. PAUL OETKEN
United States District Judge